

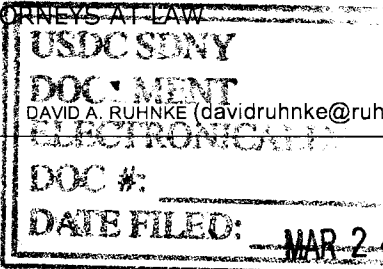
RUHNKE & BARRETT

ATTORNEYS AT LAW

47 PARK STREET
MONTCLAIR, N.J. 07042
973-744-1000

29 BROADWAY, SUITE 1412
NEW YORK, N.Y. 10006
212-608-7949

973-746-1490 (FAX)



DAVID A. RUHNKE (davidruhnke@ruhnkeandbarrett.com) ♦ JEAN D. BARRETT (jeanbarrett@ruhnkeandbarrett.com)

DOC #:

DATE FILED:

MAR 24 2020

REPLY TO MONTCLAIR OFFICE

March 18, 2020

Honorable George B. Daniels, U.S.D.J.
United States District Court
500 Pearl Street
New York, NY 10007

MAR 24 2020

MOTION DENIED

George B. Daniels
Judge George B. Daniels

Re: *United States v. William Bradley*, 19 Cr. 632 (GBD)

Dear Judge Daniels:

I write respectfully to move on behalf of William Bradley for an order granting his release. William, who is a pretrial defendant currently held at the MCC New York is within the group of people the Centers for Disease Control and Prevention ("CDC") has categorized as most-at-risk for contracting COVID-19, the dangerous illness spreading rapidly across the world, through New York State, and within New York City. The Bail Reform Act provides for the "temporary release" of a person in pretrial custody "to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason." 18 U.S.C. § 3142(I). The health risk to William because of his cardiovascular disease, is a compelling reason for his release on bond at least until this pandemic has ended. Undersigned counsel is working with family members to arrange a suitable living situation for William and family members are available to sign a bond.

Factual Background

Changed Circumstances: COVID-19 Outbreak

As of March 18, 2020, the new strain of corona virus which causes COVID-19, has infected over 210,000 people, leading to at least 8,807 deaths worldwide. There are 7,837 cases in the United States and 141 people have died.¹ On March 11, 2020, the World Health Organization officially classified COVID-19 as a pandemic.² Governor Cuomo declared a State of Emergency on March

¹ *Coronavirus Map: Tracking the Spread of the Outbreak*, The New York Times (March 18, 2020), at <https://nyti.ms/2U4kmud> (updating regularly).

² *WHO Characterizes COVID-19 as a Pandemic*, World Health Organization (March 11, 2020) at <https://bit.ly/2W8dwpS>.

RUHNKE & BARRETT
ATTORNEYS AT LAW

HONORABLE GEORGE B. DANIELS, U.S.D.J.
March 18, 2020
Page 2

7, 2020.³ Mayor DiBlasio declared a State of Emergency in New York City on March 12, 2020.⁴ As of March 18, 2020, there are 2382 positive cases in New York State; 1339 in New York City.⁵ These numbers will grow exponentially.⁶

The CDC has issued guidance that individuals at higher risk of contracting COVID-19—adults over 60 years old and people with chronic medical conditions such as lung disease, heart disease, and diabetes—take immediate preventative actions, including avoiding crowded areas and staying home as much as possible.⁷ Studies of the incidents of deaths in China indicate that people with cardiovascular diseases, including high blood pressure, have the worst outcomes.⁸ With confirmed cases in New York City that indicate community spread, we must take every necessary action to protect vulnerable populations.

Confinement and Spread of Corona Virus

Conditions of pretrial confinement create the ideal environment for the transmission of contagious disease.⁹ Inmates cycle in and out of BOP pretrial facilities from all over the world and the country, and people who work in the facilities leave and return daily. Incarcerated people have poorer health than the general population, and even at the best of times, medical care is limited in federal pretrial detention centers.¹⁰ Many people who are incarcerated also have chronic conditions, like cardiovascular disease, diabetes or HIV, which makes them vulnerable to severe forms of COVID-19. According to public health experts, incarcerated individuals “are at special risk of infection, given their living situations,” and “may also be less able to participate in proactive measures to keep themselves safe;” “infection control is challenging in these settings.”¹¹ Outbreaks of the flu regularly occur in jails, and during the H1N1 epidemic in 2009, many jails and prisons dealt with high numbers of cases.¹² In China, officials have confirmed the corona virus spread at a rapid pace in

³ *At Novel Coronavirus Briefing, Governor Cuomo Declares State of Emergency to Contain Spread of Virus*, New York State (March 11, 2020) at <https://on.ny.gov/2TKzloz>.

⁴ *DeBlasio Declares State of Emergency in NYC, and Large Gatherings Are Banned*, New York Times (March 12, 2020).

⁵ *Novel Coronavirus (COVID-19)*, New York State Department of Health (March 18, 2020) at <https://coronavirus.health.ny.gov/county-county-breakdown-positive-cases> (updating regularly).

⁶ <https://www.nytimes.com/2020/03/13/science/coronavirus-math-mitigation-distancing.html>

⁷ *People at Risk for Serious Illness from COVID-19*, CDC (March 12, 2020) at <https://bit.ly/2vgUt1P>.

⁸ <https://www.nationalgeographic.com/science/2020/03/these-underlying-conditions-make-coronavirus-more-severe-and-they-are-surprisingly-common/#close>

⁹ Joseph A. Bick (2007). *Infection Control in Jails and Prisons*. *Clinical Infectious Diseases* 45(8):1047-1055, at <https://doi.org/10.1086/521910>.

¹⁰ Laura M. Maruschak et al. (2015). *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfpi1112.pdf>

¹¹ “Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States,” (March 2, 2020), at <https://bit.ly/2W9V6oS>.

¹² *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, The Verge (Mar. 7, 2020) at <https://bit.ly/2TNcNZY>.

RUHNKE & BARRETT
ATTORNEYS AT LAW

HONORABLE GEORGE B. DANIELS, U.S.D.J.
March 18, 2020
Page 3

Chinese prisons.¹³ Secretary of State Mike Pompeo has called for Iran to release Americans detained there because of the “deeply troubling” “[r]eports that COVID-19 has spread to Iranian prisons,” noting that “[t]heir detention amid increasingly deteriorating conditions defies basic human decency.”¹⁴ Courts across Iran have granted 54,000 inmates furlough as part of the measures to contain corona virus across the country.¹⁵ Brooklyn District Attorney Eric Gonzalez, joined by public health experts, has asked Governor Cuomo to grant emergency clemencies to elderly and sick prisoners.¹⁶

To date, MCC has not met even the most basic recommendations of the CDC for preventing the spread of the coronavirus. Because of this, defense attorneys have begun to encounter difficulties finding interpreters and experts willing to enter these facilities, and the many lawyers who are at high risk because of age or underlying medical condition have been advised not to enter. Officials are still waiting for guidance from the BOP on screening and treatment. The MCC lacks even a basic sign advising people who have travelled to the highest-risk countries not to enter. Many staff are not wearing face masks or gloves. As far as we know hand sanitizer is not available.¹⁷ The facility plans to provide bar soap to inmates, but as of now, not every inmate has access to soap. Only those inmates who have money for commissary are able to purchase antibacterial soap. There is no testing for COVID-19 as far as we know.

As additional people are arrested who have been out in the community as the coronavirus spreads, if they are not symptomatic, they will be brought into the facility and held with the existing population, potentially bringing COVID-19 into this population held in large numbers, close quarters, and low sanitary conditions.

The Bail Reform Act Requires William Bradley's Release

A “judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.” 18 U.S.C. § 3142(I). The circumstances that existed when William Bradley was ordered detained have now changed. There is a pandemic that poses a direct risk to William that is far greater if he continues to be detained during this public health crisis.

William Bradley, age 58, is vulnerable because he suffers from high blood pressure and had

¹³ Rhea Mahbubani, *Chinese Jails Have Become Hotbeds of Coronavirus As More Than 500 Cases Have Erupted, Prompting the Ouster of Several Officials*, Business Insider (Feb. 21, 2020) at <https://bit.ly/2vSzSRT>.

¹⁴ Jennifer Hansler and Kylie Atwood, *Pompeo calls for humanitarian release of wrongfully detained Americans in Iran amid corona virus outbreak*, CNN (Mar. 10, 2020) at <https://cnn.it/2W4OpV7>.

¹⁵ Claudia Lauer and Colleen Long, *US Prisons, Jails On Alert for Spread of Corona virus*, The Associated Press (Mar. 7, 2020) at <https://apnews.com/af98b0a38aaabedbc059092db356697>.

¹⁶ *Corona virus: Sentenced to COVID-19*, The Daily Appeal (Mar. 12, 2020) at <https://theappeal.com>

¹⁷ On March 12, 2020, the Warden of the MCC advised that they are seeking to order hand sanitizer, and that the BOP has relaxed its strictures on hand sanitizer during this period. The Warden had no information as to when hand sanitizer might arrive at the facility.

RUHNKE & BARRETT
ATTORNEYS AT LAW

HONORABLE GEORGE B. DANIELS, U.S.D.J.
March 18, 2020
Page 4

a stroke within the last two years. These health problems make him vulnerable to contracting serious illness or even dying if he is infected with corona virus. There is no rational reason to force him to remain in MCC, into which new prisoners are being introduced daily from the street, any of whom could bring contagion into the facility if it is not already there. William is charged with being a hand-to-hand street dealer who is himself an addict. Non-violent individuals like William do not belong there in this time of existential crisis. It is reckless and, frankly, immoral to keep William incarcerated when he could be monitored electronically on the outside.

Courts have long recognized that there is no greater necessity than keeping a defendant alive, no matter the charge. As Judge Weinstein held, "We do not punish those who have not been proven guilty. When we do punish, we do not act cruelly. Continued incarceration of this terminally ill defendant threatens both of these fundamental characteristics of our democracy." *United States v. Scarpa*, 815 F.Supp.88 (E.D.N.Y. 1993) (pretrial defendant with AIDS facing murder charges released on bail because of the "unacceptably high risk of infection and death on a daily basis inside the MCC"). *See also United States v. Adams*, No. 6:19-mj-00087-MK, 2019 WL 3037042 (D. Or. July 10, 2019) (defendant charged with violation of the Mann Act and possession of child pornography and suffering from diabetes, heart conditions and open sores released on home detention because of his medical conditions); *United States v. Johnston*, No. 17-00046 (RMM) 2017 WL 4277140 (D.D.C. Sept. 27, 2017) (defendant charged with violation of the Mann Act and in need of colon surgery released to custody of his wife for 21 days); *United States v. Cordero Caraballo*, 185 F. Supp. 2d 143 (D.P.R. 2002) (badly wounded defendant released to custody of his relatives).

Conclusion

William Bradley is among the vulnerable population at heightened risk of getting very sick from this illness. For that reason, he should be granted release on bond to home confinement with electronic monitoring.

Respectfully submitted,

/s/ Jean D. Barrett

Jean D. Barrett
(973) 865-7007

cc: Brett Kalikow, AUSA